IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2038 OF 2004

IN

SUIT NO.1988 OF 2004

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M/s.BreadTalk Pte Ltd. ...Plaintiff

v/s.

Kaberi Investment Pvt.Ltd. ...Defendant

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Mr.Iqbal Chagla with Mr.Agarwal, Mr.Manish Saurashtree i/b Shantilal & co. for the Plaintiff.

Dr.V.V.Tulzapurkar with Mr.H.W.Kane & Mr.Rahul Kadam for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 14TH JULY,2005

P.C.:

1. After both sides argued the matter for quite some time, the learned Counsel appearing for the Plaintiff sought permission of the court to withdraw the motion with liberty to take out a fresh notice of motion.

2. Request made on behalf of the Plaintiff for liberty to take out the fresh motion is opposed on behalf of the Defendant. According to the Defendant, the objection that adequate material was not produced by the Plaintiff was taken in the reply. The Plaintiff has filed the rejoinder, but still the Plaintiff has not been able to produce necessary material and therefore, the Plaintiff should not be granted liberty to take out a fresh notice of motion for the same relief.

3. In my opinion, considering that these are interlocutory applications and that the Plaintiff is a Foreign firm, liberty should be granted to the Plaintiff. However, it is true that the Plaintiff

not only took out this Notice of Motion, but the Defendant was also required to file his affidavit and the motion was also argued for quite some time. There is prejudice suffered by the Defendant. However, the prejudice suffered by the Defendant is capable of being mitigated by awarding costs to the Defendant. Hence, the Notice of Motion is permitted to be withdrawn with liberty to take out fresh notice of motion for the same reliefs. The Plaintiff, however, is directed to pay, as and by way of costs of this Notice of Motion, an amount of Rs.10,000/- to the Defendant.

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